

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 9466 of 1995
With
SPECIAL CIVIL APPLICATION No. 9467 of 1995

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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- 1 Whether Reporters of Local Papers may be allowed
to see the judgment ?
- 2 To be referred to the Reporter or not ?
- 3 Whether their Lordships wish to see the fair copy
of the judgment ?
- 4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?
- 5 Whether it is to be circulated to the civil judge
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MANEKCHOWK CO-OPERATIVE BANK LTD. - Petitioner(s)
Versus
RAMSHEHI SYNTHETICS PVT LTD & 3 - Respondent(s)

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Appearance :

MR AK CLERK for Petitioner(s) : 1,
MR SHIRISH JOSHI for Respondent(s) : 1,
NOTICE SERVED BY DS for Respondent(s) : 2 - 4.

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 03/07/2006

ORAL JUDGMENT

1.The petitioner-Bank challenges an order dated

13-6-1995 passed by the Gujarat State Cooperative Tribunal. By these petitions, the petitioner has challenged a common order dated 13-6-1995 passed by Gujarat State Cooperative Tribunal while deciding revision application filed by the petitioner-Bank.

2. The petitioner-bank had filed two Lavad Suits against the respondents no. 2 to 4 herein. During the pendency of the Lavad suits, the petitioner-Bank wanted to join respondent no.1, a Private Limited Company as party-respondent in both the Lavad Suits. Such applications were allowed by the Board of Nominees by a common judgement and order dated 16-8-1993. The respondent no.1-Company herein filed revision application before the Cooperative Tribunal and opposed the orders passed by the Board of Nominees. These revision applications were allowed by common judgement which is impugned in this petition.

3. Primarily the case of the petitioner was that

respondent no.1-Company stood as guarantor for the loans disbursed by the petitioner in favour of respondents no. 2 to 4. Mortgage through depositing of title deeds was done in favour of the petitioner. Respondent no.1 would therefore, be a necessary party in the pending suits. On the other hand, the stand of the respondent no.1 was that there is no material on record to establish even prima facie the averments of the Bank. It was pointed out that earlier respondent no.1 had become a member of the petitioner-Bank and had availed of loan. This loan was however, repaid and respondent no.1 in fact ceased to be member of the petitioner-bank. It was thereafter not open for the petitioner to drag the respondent no.1 in pending litigation against other individuals.

4. The Tribunal upheld the contention of respondent no.1 setting aside order passed by the Board of Nominees and allowed the revision application.

5. In the impugned judgement, Tribunal primarily

found that respondent no.1 though at one time was a member of the petitioner-Bank and had also availed of loan, had after discharge of the liabilities being permitted to even sever its ties with the petitioner. The share capital also was returned. It was the view of the Tribunal that if there were dues outstanding against respondent no.1 even in the form of guarantee, the Bank would have utilised funds of respondent no.1 lying with Bank to secure its deposits. The Tribunal therefore, found that respondent no.1 was not a necessary party in the pending Lavad Suits. Additionally, the Tribunal also came to the conclusion that the writing purported to have been issued by one of the Directors of the Bank on 13-7-1997 recording the borrowing of the respondents no. 2 to 4 for which respondent no.1 had provided security would not bind the respondent no.1-Company since it is not clear whether Director had an authority to commit on behalf of the Company. It was observed that ordinarily the Private Limited Company would not stand as a surety for any private debts.

6. Having heard the learned advocates appearing for the parties and having perused the material on record, I find that order passed by the Cooperative Tribunal requires to be interfered with.

7. The stand of the petitioner-Bank before lower authorities was that respondent no.1 had offered security for the loans granted by the petitioner in favour of respondents no. 2 to 4. If that be so, considering the provisions of section 96 of the Gujarat Cooperative Societies Act, the Company would be a necessary and proper party. The suit would therefore, be maintainable against such a Company. Whether there was a valid document evidencing these aspects of the matter is established on record or not is a matter of evidence. Whether the concerned Director had authority to commit on behalf of the Company or not is also a matter which can be judged only upon evidence being brought on record. In my view the petitioner should have

been permitted to join respondent no.1 as party in the pending suits. By detailed examination of evidence, which was yet to be brought on record, the proceedings against respondent no.1 ought not to have been scuttled.

8. In the result, impugned order dated 13-6-1995 passed by the Tribunal is quashed. The Board of Nominees shall proceed further with the pending suits after joining respondent no.1 herein as party and permitting the respondent no.1 to defend himself. Nothing stated here-in-above would indicate any opinion on my part about the nature of liability of respondent no.1 or the validity of the stand of either of the parties. The entire issue will be judged by the Board of nominees unmindful of any of the observations made here-in-above.

9. With these directions, the petitions are allowed. Rule made absolute with no order as to costs.

(Akil Kureshi, J.)

(raghu)